IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2222 OF 2006

Lt.Col. S. Mishra — Petitioner
vs.
Union of India & ors. — Respondents

Mr.J.Reis with Mr.Suresh Kumar for the petitioner.

Mr.P.M.Pradhan with Ms.Leena Patil for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 6th October, 2006

P.C.

The petitioner an Indian Army Officer has challenged the action of the respondents in not allotting the proper separate family accommodation keeping in view the ailment of the petitioner's wife who is a neurotic patient and further not permitting the petitioner to retain the existing family accommodation till December, 2006 i.e. upto the completion of the course for which the Indian Army has nominated the petitioner.

2. The petitioner was posted in Mumbai on 14.11.2003 as Major in the NCC Unit of Indian Army. The petitioner thereafter was promoted as Lieutenant Colonel on 16.12.2004. The posting of the petitioner was in non-family station. The petitioner has been allotted

family accommodation in Mumbai at 2, Knight House, Napier Road, Behind R.C.Church, Colaba, Mumbai.

3. On 13.3.2006 the Army Headquarters at Delhi has issued posting order which was received by the petitioner on 13.4.2006 whereby he has been transferred to Kolar, Karnataka State. The petitioner was asked to report on 28.4.2006. As the petitioner was transferred to non-family station, the petitioner wants to retain the present accommodation at Mumbai. Therefore, a representation dated 30.3.2006 was made. The respondents accepted the request for retention of the accommodation and asked the petitioner to exercise his option on or before 17.6.2006. The said application was accordingly made on 14.6.2006, for separate family accommodation and also requested to retain the existing accommodation till the end of the course at Mumbai.

4. The main ground for the retention has been the ongoing treatment of his wife who is suffering from an acute Subdural Haemotoma, for which she had underwent brain surgery on 10.12.2005 at INHS Aswini Hospital. She is still under treatment from the same hospital. She is therefore unable to leave the station on her own. The Commanding Officer, Kolar had also recommended the case of the petitioner to allot the petitioner a ground floor accommodation near the hospital.

5. By a letter dated 23.6.2006 the petitioner has been allotted an accommodation at 3, Namdar Manzil, Pasta Lane, Fish Market, Colaba, Mumbai by the Committee which is not SF accommodation. The petitioner was asked to vacate the premises on or before 22.7.2006. The petitioner therefore made a representation dated 23.6.2006 to cancel the said allotment and requested to allot fresh accommodation near the hospital. By letter dated 27.6.2006 the respondents directed the petitioner to shift to the allotted place otherwise they would charge Rs.230/- per square meter that means Rs.72,519/- per month. The respondents have warned the petitioner again by letter dated 7.7.2006. The petitioner made representations dated 15.7.2006/19.7.2006, requesting for retention of the existing accommodation. The respondents by letter dated 21.7.2006 rejected the said request of the petitioner.

6. A show cause notice dated 21.7.2006 was issued by the respondents and directed the petitioner to remain present on 29.7.2006 for a personal hearing. Same was replied on 28.7.2006 by the petitioner and reiterated his request for retention of the existing accommodation. The said request was made by pointing out the difficulties of the petitioner's wife. The petitioner has pointed out that he is entitled to retain the

existing accommodation for a period of six months or at least till the end of the course. The respondents though available are not providing the accommodation in the Army Campus in Colaba Military Station, close to the hospital. The petitioner has also pointed out the problem at the newly allotted building near Pasta Lane on the foundation that it is not safe for the single female along with two minor children on ground floor, specially because it is located in congested area of Colaba. The other difficulty of non-availability of the school bus for the children was also agitated. The respondents by letter dated 2.8.2006 rejected the representation made by the petitioner again.

7. Admittedly, the respondents, after considering the representation made by the petitioner have provided the accommodation to the petitioner at a distance of about 2.9 km. away from the hospital and ordered him to vacated the existing premises on or before 2.7.2006. The petitioner's request for retention of the existing premises rejected with warning that he would be charged at the rate of Rs.230/- per square meter if he fails to vacate the premises as ordered. After considering the rules, the respondents, in the facts and circumstances of the case and also in view of the waiting list of the officers for such accommodation, rejected the case of the petitioner. There is no reason to reconsider the

case of the petitioner as sought to be contended in the present petition by referring to the various rules called "Special Army Order" (SAO).

8. The petitioner admittedly has been transferred to Kolar, Karnataka State and asked to report on 28.4.2006. The petitioner before transfer was posted at Mumbai for completing the course. The insistence to retain the existing accommodation, on the ground of his wife's illness, in no way calls for interference with the orders passed by the respondents, as it was passed after considering all his representations including the ongoing medical treatment of his wife. The respondents have power to exercise the discretion within the framework of their rules. There is nothing illegal or any illegality as such pointed out and/or even borne out from the submissions made by the petitioner based on the rules. It is difficult to accept the case of the petitioner for retaining the existing accommodation. On the contrary, the respondents have taken note of the opinion of the Neuro Surgeon who has concurred with the allotment, made by the respondents, of 3, Namdar Manzil, The fact that his wife was operated on 10.12.2005 and not recently, also cannot be overlooked. The respondents have considered all these facets and provided the alternative accommodation after due consultation with the concerned Doctor of the hospital.

9. The petitioner cannot claim benefits on the foundation of rules 66 and 88 of SAO. Rule 88 itself provides that the family may be provided with alternative accommodation in the same or lower class, if the accommodation occupied is required for incoming Officer. The question of regulating the retention as per rule 66 is not applicable to the case of the petitioner. The petitioner has been transferred as provided under rule 65 of SAO. There is no question of any arbitrariness in rejecting the representation of the petitioner. There is no material to justify the averments of malafides or prejudice or bias. The petitioner had exercised the option as per clause 74 of SAO dated 10.8.1986. The Officer Incharge has power to consider the same according to the waiting list. The said letter was sent by the petitioner from Karnataka on 14.6.2006 with a certificate by the Commanding Officer that he is awaiting allotment of separate family accommodation as serving the said Unit with effect from 28.4.2006 as a permanent personnel and the said station is a non-family station.

10. The respondents in their affidavit has averred that the petitioner has annexed a document purporting to be a document dated 17.6.2006 which clearly show that the said document is not the same which was received by the

Officer, Station Cell Headquarters, Mumbai. The said letter dated 14.6.2006 received by the office of the Station Cell on 17.6.2006. They further averred that the Officer is entitled for the accommodation at Mumbai purely based on his posting for which he has exercised option and not due to undergoing re-settlement course. The respondents have provided the accommodation as per the existing rules and regulations.

11. The existing accommodation, is admittedly on the first floor and the newly allotted accommodation is on the ground floor. To accommodate the petitioner's family as the petitioner has been posted at 10, Karnataka Bn., Kolar, the respondents have provided the new accommodation till the completion of resettlement course at Mumbai. The Committee has further recommended that the petitioner be placed at Sr.No.20 of the waiting list of separate family accommodation on priority basis, pending allotment of a separate family accommodation. The respondents have also considered that Knight House building has no elevator. The said accommodation is family accommodation need to be given to the permanently stationed officer. There are about 55 officers on the waiting list for the same. The claim of the petitioner to retain the said accommodation as he is attending the course under the re-settlement scheme for the post retirement benefits, therefore, cannot be said to be

rejected arbitrarily or without any foundation.

12. The fact that the petitioner has exercised his option on 14.6.2006 though joined at Karnataka in April, 2006 on the basis of non-availability of accommodation at the station, where he has been posted. The application was considered for the separate family accommodation and provided the ground floor in view of ill-health of his wife. The respondents have pursuant to para 66 of SAO informed the sanction of the Station Commander to retain the Government Married Accommodation Quarter Knight House, Colaba, Mumbai, with effect from 18.4.2006 to 17.6.2006 and to exercise option, through letter dated 1.5.2006 and the petitioner was asked to exercise the option within the above period or to vacate the accommodation on or before 17.6.2006. The petitioner having exercised the option on 14.6.2006 when his application was sent by the Commanding Officer, 10, Karnataka with a request for separated family accommodation is also material factor which the respondents have rightly considered while rejecting the petitioner's case.

13. Taking all this into account, we see that there is no case made out by the petitioner to interfere with the orders passed by the respondents. However, considering the fact that this Court has granted status-quo on

1.9.2006 and the same has been in operation since then, we are of the view that the petitioner be permitted to retain the said accommodation for fifteen more days. The petitioner should vacate the premises within fifteen days from the date of this order. The respondents, however, in the facts and circumstances should recover the enhanced occupation charges only if, the petitioner fails to vacate the existing premises within fifteen days as directed. The respondents otherwise are free to charge the said rent as claimed.

14. Taking above into above, the petition is dismissed. Status-quo order also stands vacated subject to above observation. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)